

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION**

CLERK'S OFFICE U.S. DIST. COURT
AT ROANOKE, VA
FILED
August 26, 2024
LAURA A. AUSTIN, CLERK
BY:
s/A. Beeson
DEPUTY CLERK

REECE GENE MULLINS,)
Plaintiff,) Case No. 7:23CV00149
v.)
OPINION
OFFICER RINER, ET AL.,) JUDGE JAMES P. JONES
Defendants.)

Reece Gene Mullins, Pro Se Plaintiff; Joseph A. Piasta, JOHNSON, AYERS & MATTHEWS P.L.C., Roanoke, Virginia, for Defendants.

The plaintiff, Reece Gene Mullins, a Virginia inmate proceeding pro se, filed this civil rights action under 42 U.S.C. § 1983, alleging that the defendants violated his constitutional rights. On July 26, 2024, defendants Riner and Wheale filed a Motion for Summary Judgment arguing for dismissal of Mullins' claims because he failed to exhaust available administrative remedies before filing this case, as required by 42 U.S.C. § 1997e(a).^{*} On July 30, 2024, the court mailed a Notice advising Mullins that he had twenty-one days to submit any further counter-affidavits or other relevant evidence contradicting, explaining or avoiding the defendants evidence and argument on exhaustion before the court would rule on the summary judgment motion. The Notice warned Mullins that if he did not respond to the motion, the

* Claims against other defendants were previously dismissed.

court would assume that he had lost interest in the case or that he agreed with the defendants' arguments for dismissal. The Notice advised Mullins that if he wished to continue with the case, it was "necessary that [he] respond in an appropriate fashion" and if he did not file some response to the defendants' motions within the twenty-one-day period, the Court might "dismiss the case for failure to prosecute." Notice, ECF No. 59.

The time allotted for Mullins to respond to the defendants' motion has passed, and he has failed to file any response to the motion. Accordingly, I will dismiss the action and the defendants' motion without prejudice.

An appropriate Final Order will issue herewith.

ENTER: August 26, 2024

/s/ JAMES P. JONES
Senior United States District Judge